

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

**601 NEW JERSEY AVENUE, NW
SUITE 9500
WASHINGTON, DC 20001**

September 20, 2005

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

SERVICE TRANSPORT, LLC

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Docket No. LAKE 2005-121-M
A.C. No. 12-00066-57245 K536

BEFORE: Duffy, Chairman; Jordan, Suboleski, and Young, Commissioners

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2000) (“Mine Act”). On August 15, 2005, the Commission received a letter from counsel for Service Transport, LLC (“Service Transport”) which we construe as a motion to reopen a penalty assessment that purportedly became a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a).

On May 23, 2005, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued to Service Transport a proposed penalty assessment. Mot. at Attach. Service Transport contested the proposed penalty assessment in a letter dated June 20, 2005 and sent to the Department of Labor’s Office of the Solicitor in Chicago, Illinois, with a copy also sent to the Commission. *Id.* Neither the Office of the Solicitor or the Commission processed the contest, as this is normally done by MSHA’s Civil Penalty Compliance Office. The Secretary does not oppose Service Transport’s request for relief.

Here, Service Transport attempted to timely contest the proposed penalty assessment, but

was under the mistaken impression that it had to file its contest at the Commission. Indeed, the cover sheet routinely accompanying proposed assessments states: “30 CFR 100.7 gives you 30 days to either pay the Proposed Assessment or contest the Proposed Assessment with the Federal Mine Safety and Health Review Commission.” These instructions further specify that if an operator wishes “to contest . . . just some of the violations listed in the Proposed Assessment,” the contest must be sent to MSHA’s Civil Penalty Compliance Office.

Under these circumstances, we conclude that the company’s contest sent to the Solicitor of Labor and the Commission on June 20, 2005 constituted timely notification of the Secretary under section 105(a) of the Mine Act of its intention to contest the proposed penalty.

Accordingly, the proposed penalty assessment is not a final order of the Commission. We remand this matter to the Chief Administrative Law Judge for assignment to a judge. This case shall proceed pursuant to the Mine Act and the Commission’s Procedural Rules, 29 C.F.R. Part 2700.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

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